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US EPA, Region 4
Water Division, OWSPB
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Atlanta Federal Center
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RE: Docket ID No. EPA-HQ-OW-2018-0640

Although I will go into specifics later, it is necessary, if obvious, to point out that the State of Florida, with vast wetlands contiguous to the sea, the land, rivers and lakes, deserves the highest regulatory protection. Indeed, many of these critical wetlands belong to the state through sovereignty or through major acquisition efforts because of their ecological importance, their importance to the fishing industry and to tourism, and because of the physical and flood protection which they offer. My lifelong experience in environmental protection, including as former Florida Secretary of the Department of Environmental Regulation at the time when state regulation of wetlands began, I hope gives me the privilege to speak my mind.

Our review and re-review of the assumption of 404 permitting concluded that this was an undesirable step. Not one of those factors behind that conclusion has changed in today's world. In fact, some of them have gotten worse. As Floridians, we have to ask: Why now? Yes, it's always desirable to reduce bureaucratic paperwork, especially when a program can be devised with equal protection through a true delegation. But the law in this case does not involve a true delegation, where the state must follow the federal laws and rules. In fact, the rules are hazy, and certainty and predictability in the delegation process don't even exist. In fact, other states' attempts at 404 assumption have led to 34 years of litigation, with only two states assuming the program to date. Therefore, when citizens are facing administrations at both the state and federal levels that are of similar bent, it is relatively easy to cobble together something that might withstand a legal challenge. Public comment has been overwhelmingly negative. And here we find ourselves, a few days before an important election, with strong and contrasting views on these matters, rushing to write our comments. Why now?

Ex. 6 Personal Privacy (PP)

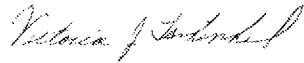
1. Which waters will be subject to the "delegation"? Here we are, at least two years after we asked for and the US Corps of Engineers promised to tell us, where the federal government would relinquish its authority. I guess the agency decided that this is a difficult/impossible task, since the state is crisscrossed by rivers and lakes. Some are navigable under Florida law, and some are navigable under various decisions in federal law; many are non-navigable waters and all have adjoining wetlands. The permit applicants are going to have a field day, and the lawyers a windfall, trying to figure out who is the regulator. And the citizens will have no idea which agency is on first.
2. Why is this so important? Because this is not a delegation. It is an alternative program to the federal one. Once the state of Florida has sole jurisdiction, the permitting is not a federal action. This means that the National Environmental Policy Act will no longer apply, and a comprehensive, scientific and economic review, with much public input, will disappear. Think of phosphate mines, extensive development projects, and malls, for example. I am trying to envision how we will get a fair permitting review of the ill-conceived state-long tollway envisioned in the M-CORES project.
3. Similarly, the Fish and Wildlife Coordination Act will be handled as a sort of bureaucratic Rube Goldberg Machine. Memoranda of understanding have been prepared between various parties; EPA, Corps, DEP, Fish and Wildlife Service, Water Management Districts, Florida Wildlife Commission would all have to be involved in this process, stated or unstated. So, in this way, accountability for protection of listed species and their fate ... say, manatees, ospreys and sea turtles, and more than 110 others, will be impossible for the public to trace. It is no coincidence that the Florida Legislature gave no additional authority to state agencies to protect endangered and threatened species. The Administration didn't even propose any.
4. Come to think of it ... who will be in charge? Florida says it has plenty of people to sensibly work on this program. I'm not talking here only about extremely large projects, but routinely, who routes the applications between the state and the Corps, who determines the different jurisdictions of wetlands requirements, who performs biological surveys, including endangered species determinations, who reviews water quality impacts? And who is legally in charge of what? In the 404 Program, we had professional staff at the Army Corps of Engineers ensuring that comments on every raised relevant issue were investigated by appropriate agencies. Is there a comprehensive workload estimate for the water management districts, the Florida Wildlife Commission and the Department of Environmental Protection, duty allocation and roadmap as to where and when all these actions will occur? Is there a way for the public to communicate with the personnel involved on an informal basis? And finally, is there a funded training program for all the participants? It hardly seems that the Corps or EPA

has the data to confirm that Florida has the talent and means to perform these duties.

In short, this is an ill-conceived, unworkable, unfunded and non-compliant application for the State of Florida to assume the duties of Section 404 permitting. It will result in endless litigation and confusion, beginning with any federal decision to approve this request and continuing on endlessly with the obvious mish-mash of legal duties the way this process will be structured (or not). Of course, the damage to the environment with the loss of NEPA review, the addled review for threatened and endangered species, and the loss of expertise being brought to bear on project reviews will be permanent and incalculable.

I will again finish on a personal note. Before I became Secretary, I served as Assistant Secretary. One of my duties was to bring administration of the Coastal Management Act to Florida. Perhaps it was one of my more undistinguished efforts as it was parodied as the "No New Nothing Bill". True we didn't get more authority under Florida law, but we did get opportunities to review federal projects with stronger powers. I guess this is the "No New Nothing Bill" of the 2000's ... except in this case, the environment gets less protection.

Sincerely,



Victoria Jean Tschinkel
Former DEP Secretary, 1981-1987
Chair, Litigation Committee,
1000 Friends of Florida

cc. Governor Ron DeSantis
Noah Valenstein